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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 JEFF POKORNY and LARRY BLENN
19 on behalf of themselves and those similarly
situated,

20 Plaintiffs,

21 v.

22 QUIXTAR INC., *et al.*,

23 Defendants.
24
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CASE NO. C 07-00201 SC

**STIPULATION AND
[PROPOSED] ORDER
REGARDING PLAINTIFFS'
MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

Court: One, 17th Floor
Judge: Honorable Samuel Conti

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1 **STIPLUATION AND [PROPOSED] ORDER**

2 Plaintiffs Jeff Pokorny and Larry Blenn and proposed Plaintiff Kenneth Busiere
3 (collectively, "Plaintiffs"), and Defendants Quixtar Inc., Ron Puryear, Jr., Georgia Lee Puryear,
4 World Wide Group, LLC, Britt Worldwide, LLC, American Multimedia Inc., Britt Management,
5 Inc., Bill Britt, and Peggy Britt (collectively, "Defendants"), through their undersigned counsel,
6 hereby stipulate as follows:

7 **PREAMBLE**

8 WHEREAS, on January 10, 2007, Plaintiffs Pokorny and Blenn, through their
9 undersigned counsel, initiated this action.

10 WHEREAS, on March 5, 2007, Defendants filed a Motion to Dismiss or Stay and Compel
11 Compliance with Dispute Resolution Agreement ("Motion to Dismiss"). On April 24, 2007, the
12 Court took the Motion to Dismiss under submission.

13 WHEREAS, on June 8, 2007, Kenneth Busiere, through the Boies Schiller firm, filed an
14 action in the California Superior Court for the County of Los Angeles, which action was removed
15 by Defendants on June 20, 2007, to the United States District Court for the Central District of
16 California. The federal action was captioned *Busiere v. Quixtar, et al.*, Case No. C-07-3993
17 AHM (RCx) (the "*Busiere* Action"), and was assigned to the Honorable A. Howard Matz.

18 WHEREAS, on July 9, 2007, Defendant Quixtar filed in the *Busiere* Action a Motion to
19 Dismiss, or in the Alternative, to Transfer.

20 WHEREAS, on July 30, 2007, the Honorable A. Howard Matz heard oral argument, and
21 later that day, issued an opinion dismissing without prejudice the *Busiere* Action. Judge Matz's
22 written decision was filed with this Court by Quixtar on August 2, 2007.

23 WHEREAS, on August 23, 2007, Plaintiffs Pokorny and Blenn filed in this action a
24 Motion for Leave to File First Amended Complaint seeking to add Kenneth Busiere as an
25 additional plaintiff and to add two causes of action for injunctive relief.

26 WHEREAS, the parties disagree whether the new claims for injunctive relief are viable,
27 and if viable, whether these claims are subject to the mandatory ADR provisions in the parties'
28 contracts. The parties concur that the Court will need to resolve these issues.

IT IS HEREBY STIPULATED that the First Amended Complaint may be filed, subject to each of the conditions set forth below:

2. Defendants' pending Motion to Dismiss is deemed to apply to the First Amended Complaint, without the need for additional written submissions by Defendants. *See Datastorm Techs., Inc. v. Excalibur Communications, Inc.*, 888 F. Supp. 112, 114 (N.D. Cal. 1995).

3. Because the parties disagree whether the new claims for injunctive relief (*see* Proposed First Amended Complaint, Sixth and Eighth Causes of Action) are subject to the mandatory ADR provisions in the parties' contract, each party will file simultaneous opening briefs on this narrow topic within 14 days of entry by this Court of this Stipulation and Order, and simultaneous reply briefs within 7 days of the filing of their opening briefs. The opening briefs will be limited to ¹⁰~~15~~ pages, and the reply briefs will be limited to ⁵~~7~~ pages. The parties agree that once these briefs are filed, the issue of the arbitrability of the injunctive relief claims in the First Amended Complaint will have been submitted for decision along with all the other issues taken under submission on April 24, 2007.

4. Notwithstanding the entry of this Stipulation and Order, it is understood that Defendants preserve all their objections and defenses to the First Amended Complaint.

SO STIPULATED.

Dated: September 13, 2007

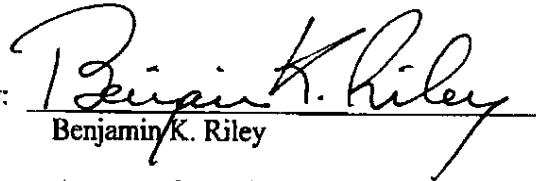
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~~[PROPOSED]~~ ORDER

Pursuant to the foregoing Stipulation of the parties, and good cause shown therefor,
IT IS SO ORDERED.

Dated: September 19, 2007

